

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JAMES M. FLINN,)
Plaintiff,)
v.) No. 3:07-CV-402
WILLIAM ANDREW CORBITT, et al.,) (Phillips/ Shirley)
Defendants.)

MEMORANDUM AND ORDER

On August 4, 2009, the Honorable C. Clifford Shirley, United States Magistrate Judge, filed an 2-page Report and Recommendation (R&R) [Doc. 85] in which he recommended that plaintiff's motion for permission to appeal *in forma pauperis* be denied because plaintiff failed to state the issues he intends to appeal.

This matter is presently before the court on plaintiff's objections to the R&R [Doc. 86]. Plaintiff has also submitted a motion to amend his IFP affidavit to state the issues he intends to present on appeal [Doc. 87]. Plaintiff's motion to amend his IFP affidavit is **GRANTED**.

As required by 28 U.S.C. § 636(b)(1), the court has now undertaken a *de novo* review of the R&R to which plaintiff objects.

Rule 24(a)(2) of the Federal Rules of Appellate Procured requires the district court to certify in writing whether the appeal is taken in good faith, and to deny the certificate if the appeal would be frivolous. The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.*

Plaintiff brought this action pursuant to 42 U.S.C. § 1983 against the judge, law enforcement and court personnel, prosecutors, and a private attorney for the alleged violation of his civil rights which occurred when officers arrested him on September 1, 2006. All allegations of plaintiff's complaint against the various defendants as well as the issues plaintiff states he intends to pursue on appeal concern his arrest on September 1, 2006. Plaintiff's complaint was not filed until October 26, 2007, and this court found his claims barred by Tenn. Code Ann. § 28-3-104(a)(3) which provides for a one-year statute of limitations for § 1983 actions. Thus, pursuant to the applicable statute of limitations, the plaintiff's claims are barred as a matter of law and any appeal would be frivolous.

For the foregoing reasons, as well as the reasons articulated by Magistrate Judge Shirley in his R&R, plaintiff's objections to the R&R [Doc. 86] are hereby

OVERRULED in their entirety whereby the magistrate judge's recommendation to deny plaintiff's motion to proceed on appeal *in forma pauperis* [Doc. 85] is **ACCEPTED**.

Accordingly, this court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, the court will **DENY** plaintiff's petition to proceed *in forma pauperis* [Doc. 82] on appeal.

ENTER:

s/ Thomas W. Phillips

United States District Judge